

<sup>1</sup> Doc. 1.

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determined by the Supreme Court of the United States; or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. § 2254(d).

Magistrate Judge Burke entered further findings that Smith Ground Two claims were not supported. She also found Smith's claim of a denial of a right to effective assistance of counsel was not cognizable on federal habeas review. Smith had no right to counsel in a motion to withdraw guilty plea proceeding.

Objections to that R&R were due by April 21, 2020. Petitioner Smith filed a motion for a 60-day extension of time in June 2020, making objections due on August 4, 2020. Petitioner Smith no objections.

The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of an R&R to which the parties have made an objection.<sup>2</sup> Failure to timely object waives a party's right to appeal the magistrate's report.<sup>3</sup> Where a party does not object to the R&R, a district court may adopt it without review.<sup>4</sup>

Additionally, this Court has independently examined the petition and the return and finds Smith's habeas petition fails.

Accordingly, in light of Petitioner Smith's decision not to object to the R&R in this case, and in light of the Court's independent review, the Court **ADOPTS** Magistrate Judge Burke's R&R, incorporates it as if fully restated herein, and **DENIES** Petitioner Smith's § 2254 habeas petition.

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<sup>2</sup> 28 U.S.C. § 636(b)(1).

<sup>3</sup> *Thomas v. Arn*, 474 U.S. 140, 154 (1985); *Gerth v. Warden, Allen Oakwood Corr. Inst.*, 938 F.3d 821, 827 (6th Cir. 2019).

<sup>4</sup> *See Thomas*, 474 U.S. at 149–50.

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IT IS SO ORDERED.

Dated: February 22, 2021

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE